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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 DENNIS T.,

10 Plaintiff,

Case No. C19-5500 RAJ

11 v.

12 COMMISSIONER OF SOCIAL
13 SECURITY,

14 Defendant.

**ORDER AFFIRMING THE
COMMISSIONER'S FINAL
DECISION AND DISMISSING
THE CASE WITH PREJUDICE**

15 Plaintiff seeks review of the denial of his applications for supplemental security
16 income and disability insurance benefits. Plaintiff contends the Administrative Law
17 Judge ("ALJ") erred by (1) failing to fully accept any of the medical opinions in the
18 record, and therefore basing the physical limitations of Plaintiff's residual functional
19 capacity ("RFC") on the ALJ's own lay medical opinions, and (2) rejecting the opinions
20 of examining doctor Jai Ghandi, M.D. Pl. Op. Br. (Dkt. 10) at 1. As discussed below,
21 the Court **AFFIRMS** the final decision of the Commissioner of Social Security
22 ("Commissioner") and **DISMISSES** this case with prejudice.

23 **BACKGROUND**

Plaintiff is 43 years old, has a master's degree, and has worked as a case manager,
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1 and customer service relations analyst, among other things. *See* Admin. Record (“AR”) 2 39, 47-48, 78. Plaintiff applied for disability insurance benefits on January 23, 2016, and 3 supplemental security income benefits on July 20, 2016, alleging disability as of July 24, 4 2014. AR 78, 95, 213-14, 217-23. Plaintiff later amended the alleged onset date to 5 November 15, 2015. AR 47. Plaintiff’s applications were denied initially and on 6 reconsideration. AR 77-121. After the ALJ conducted a hearing on November 16, 2017, 7 the ALJ issued a decision finding Plaintiff not disabled. AR 15-24.

8 THE ALJ’S DECISION

9 Utilizing the five-step disability evaluation process,¹ the ALJ found:

10 **Step one:** Plaintiff has not engaged in substantial gainful activity since November 11 15, 2015, the amended alleged onset date.

12 **Step two:** Plaintiff has the following severe impairments: Degenerative disc 13 disease, status post-surgery; lumbar post-laminectomy syndrome with stenosis and 14 radiculopathy; degenerative joint disease of the hips, right greater than left and 15 reportedly status post-replacement after Plaintiff’s date last insured; and obesity.

16 **Step three:** These impairments do not meet or equal the requirements of a listed 17 impairment.²

18 **RFC:** Plaintiff can perform sedentary work as defined in 20 C.F.R. §§ 19 404.1567(a) and 416.967(a), with additional limitations. He can never climb 20 ladders, ropes, or scaffolds. He can occasionally climb ramps and stairs. He can 21 occasionally balance, stoop, kneel, crouch, and crawl. He can have occasional 22 exposure to vibrations and hazards such as heights and machinery.

23 **Step four:** Plaintiff is capable of performing past relevant work as a telephone solicitor. This work does not require the performance of work-related activities precluded by Plaintiff’s RFC.

¹ 20 C.F.R. §§ 404.1520, 416.920.

² 20 C.F.R. Part 404, Subpart P, Appendix 1.

1 2012).

2 **A. The ALJ Did Not Harmfully Err in Formulating the Physical RFC**

3 Plaintiff argues the ALJ did not fully accept any of the medical opinions in the
4 record, and therefore erred by basing the physical portions of Plaintiff's RFC on the
5 ALJ's own lay medical opinions. Pl. Op. Br. at 2-3. Plaintiff bears the burden of
6 showing harmful error, and he has failed to meet that burden. *See Ludwig v. Astrue*, 681
7 F.3d 1047, 1054 (9th Cir. 2012) (citing *Shinseki v. Sanders*, 556 U.S. 396, 407-09 (2009))
8 (holding that the party challenging an administrative decision bears the burden of proving
9 harmful error).
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11 Plaintiff first asserts the ALJ erred in rejecting the opinions of Donald Baumer,
12 ARNP. *Id.* But Plaintiff has made almost no substantive arguments on this issue. Mr.
13 Baumer responded to a series of written questions from Plaintiff's counsel. *See* AR 777-
14 78. Mr. Baumer opined that Plaintiff would have needed to recline for one hour a day in
15 2014, and three hours a day in 2017. AR 778. Mr. Baumer opined that Plaintiff would
16 miss three or more days of work per month due to acute-to-chronic exacerbations of his
17 pain, which require one to three recovery days and occur as many as four times a month.
18 *Id.* The ALJ gave Mr. Baumer's opinions little weight. AR 22. The ALJ reasoned that
19 the opinions "lack[ed] adequate explanation or citation to objective evidence." *Id.* The
20 ALJ further reasoned that Mr. Baumer was not an acceptable medical source, and his
21 opinions were inconsistent with those of Drew Stevick, M.D.,³ who reviewed most of the
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23 ³ The ALJ did not refer to Dr. Stevick by name, but instead referred to "DDS," an
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1 record. *Id.*

2 Plaintiff has not challenged the ALJ's first reason for rejecting Mr. Baumer's
3 opinions, but has instead simply argued that the ALJ was "incorrect" in finding that Mr.
4 Baumer's opinions were inconsistent with those of Dr. Stevick. *See* Pl. Op. Br. at 3. It is
5 not enough merely to present an argument in the skimpiest way, and leave the Court to do
6 counsel's work by framing the argument and putting flesh on its bones through a
7 discussion of the applicable law and facts. *See Indep. Towers of Wash. v. Wash.*, 350 F.3d
8 925, 929 (9th Cir. 2003). Moreover, the ALJ reasonably found Dr. Stevick's opinions
9 inconsistent with Mr. Baumer's opinions. *See* AR 22. Implicit in Dr. Stevick's opinions
10 is that Plaintiff's absenteeism and productivity due to his impairments would be no
11 greater than that tolerated in competitive employment, which is inconsistent with Mr.
12 Baumer's opinions those issues. *See* AR 102-04, 116-18. Plaintiff has thus failed to
13 show that the ALJ erred in rejecting Mr. Baumer's opinions on this basis.

15 Plaintiff has further failed to show that any error in rejecting Mr. Baumer's
16 opinions as inconsistent with Dr. Stevick's opinions was harmful. The ALJ gave another
17 reason for rejecting Mr. Baumer's opinions—that they lacked adequate explanation or
18 citation to objective evidence—and Plaintiff has made no argument showing that this
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20 abbreviation sometimes used for providers who review a claimant's records as part of the Social
21 Security Administration's initial review and reconsideration. Dr. Stevick was the only doctor
22 who opined as to Plaintiff's physical capacities as part of these reviews, so the Court infers this is
23 who the ALJ was referring to. *See* AR 78-121. Charlie Bennett, the single decision maker who
conducted the initial review of Plaintiff's claim, also opined as to Plaintiff's physical capacities.
See AR 78-91. But per the Program Operations Manual System ("POMS"), DI 24510.050C,
available at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0424510050>, this is not opinion
evidence.

1 reason was erroneous. Where an ALJ gives erroneous and non-erroneous reasons for
2 rejecting evidence, the ALJ's "error is harmless so long as there remains substantial
3 evidence supporting the ALJ's decision and the error 'does not negate the validity of the
4 ALJ's ultimate conclusion.'" *Molina*, 674 F.3d at 1115 (quoting *Batson v. Comm'r of*
5 *Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004)). Plaintiff has not shown that the
6 ALJ's rejection of Mr. Baumer's opinions as inadequately explained or supported was
7 erroneous, and has thus not shown harmful error.

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9 Plaintiff next argues the ALJ did not fully accept the only other medical opinion in
10 the record regarding Plaintiff's physical limitations—that of Dr. Stevick—so the ALJ
11 must have substituted his own medical opinion in formulating the RFC. Plaintiff's
12 argument fails for two reasons. First, the ALJ's RFC is more restrictive than that of Dr.
13 Stevick, yet the ALJ still identified jobs Plaintiff could perform considering those
14 limitations. *See* AR 19, 21-23. Thus, any error was inconsequential to the disability
15 determination, and therefore harmless. *See Molina*, 675 F.3d at 1115.

16 Second, the ALJ is not required to accept in full any medical opinions to formulate
17 the RFC. He must instead consider all of the evidence, which includes medical opinions,
18 but also includes treatment records, the claimant's testimony, lay witness statements, and
19 other non-medical considerations, such as the claimant's daily activities. *See* 20 C.F.R. §
20 404.1545(a)(3); *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883 (9th Cir. 2006); SSR 96-
21 8p, 1996 WL 374184, at *5 (July 2, 1996) (stating that the "RFC assessment must be
22 based on *all* of the relevant evidence in the case record, such as: [m]edical history,
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1 [m]edical signs and laboratory findings, . . . [r]eports of daily activities, [l]ay evidence,
2 [r]ecorded observations, [and] [m]edical source statements”). The ALJ must then
3 translate all of this evidence into a succinct RFC. *See Rounds v. Comm’r Soc. Sec.*
4 *Admin.*, 807 F.3d 996, 1006 (9th Cir. 2015) (citing *Stubbs-Danielson v. Astrue*, 539 F.3d
5 1169, 1174 (9th Cir. 2008)). The RFC is not a purely medical determination, and thus the
6 ALJ did not harmfully err in formulating an RFC based on the sum of the evidence rather
7 than a particular medical opinion.

8 **B. The ALJ Did Not Harmfully Err in Rejecting Dr. Ghandi’s Opinions**

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10 Plaintiff argues the ALJ erred in rejecting the opinions of examining psychiatrist
11 Dr. Ghandi. Pl. Op. Br. at 4. An ALJ may rejected the contradicted⁴ opinions of an
12 examining doctor by providing “specific and legitimate reasons” supported by substantial
13 evidence in the record. *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995) (citing
14 *Andrews*, 53 F.3d at 1043). The ALJ met this standard.

15 Dr. Ghandi examined Plaintiff on May 14, 2016. *See* AR 557-63. Dr. Ghandi
16 reviewed Plaintiff’s medical records, conducted a clinical interview, and performed a
17 mental status examination. *See id.* Based on this information, Dr. Ghandi opined that
18 Plaintiff was impaired in his ability to perform simple and repetitive, or complex and
19 detailed tasks. AR 561. Dr. Ghandi opined that Plaintiff was impaired in his ability to
20 maintain pace, maintain attendance, interact with the public and coworkers, and adapt to
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23 ⁴ Dr. Ghandi’s opinions were contradicted by the opinions of consulting doctors Jan Lewis,
Ph.D., and Diane Fligstein, Ph.D. *See* AR 87-89, 100-01.

1 normal workplace stress due to the level of pain he was experiencing. AR 562.

2 The ALJ gave Dr. Ghandi's opinions little weight. AR 21. The ALJ reasoned that
3 Dr. Ghandi's opinions were based on Plaintiff's pain complaints, but "in this case
4 [Plaintiff's] pain is directly related to a physical impairment and not a mental health
5 impairment and thus is not adequate grounds upon which to limit [Plaintiff's] mental
6 function." *Id.* The ALJ also reasoned that Dr. Ghandi's opinions were inconsistent with
7 Plaintiff's presentation on examination, which showed normal functioning. *Id.*

8 The ALJ's first reason for rejecting Dr. Ghandi's opinions fails, but the second
9 reason withstands scrutiny. Physical impairments causing pain can affect a claimant's
10 mental functioning, regardless of whether a mental diagnosis exists. *Cf.* 20 C.F.R. §
11 404.1545(a)(1) ("Your impairment(s), and any related symptoms, such as pain, may
12 cause physical and mental limitations that affect what you can do in a work setting. Your
13 residual functional capacity is the most you can still do despite your limitations."). The
14 ALJ erred in drawing an arbitrary line between physical and mental limitations.

15 The ALJ did not err in rejecting Dr. Ghandi's opinions as inconsistent with his
16 examination of Plaintiff. An ALJ may discount a doctor's opinions when they are
17 inconsistent with or unsupported by the doctor's own clinical findings. *See Tommasetti*
18 *v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008). As the ALJ noted, Plaintiff's mental
19 status exam produced almost entirely normal results, including good performance in
20 orientation, memory, fund of knowledge, concentration, abstract thinking, insight, and
21 judgment. *See* AR 21, 560-61.

1 Because the ALJ reasonably rejected Dr. Ghandi's opinions as inconsistent with
2 his examination, the ALJ's error in rejecting Dr. Ghandi's opinions based on a
3 delineation between physical and mental limitations due to pain was harmless. *See*
4 *Molina*, 674 F.3d at 1115.

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6 **CONCLUSION**

7 For the foregoing reasons, the Commissioner's final decision is **AFFIRMED** and
8 this case is **DISMISSED** with prejudice.

9 DATED this 8th day of January, 2020.

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12 The Honorable Richard A. Jones
13 United States District Judge
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